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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Multi-Association (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers	)	CC Docket No. 00-256
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Access Charge Reform for Incumbent Local exchange Carriers Subject to Rate-0f-Return Regulation	)	CC Docket No. 98-77
	)	
Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers	)	CC Docket No. 98-166

COMMENTS OF THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

The Rural Independent Competitive Alliance ("RICA") files these comments in response to the Notice of Proposed Rule Making in this proceeding, FCC 00-448, released January 5, 2001 ("NPRM"). RICA is an alliance of Competitive Local Exchange Carriers ("CLECs") providing competitive service in rural areas of the United States. RICA members are generally affiliated with a rural incumbent local exchange carrier ("ILEC") and compete in adjacent markets in which the ILEC is a Bell Operating Company ("BOC") or affiliate of a large holding company.

In addition to these comments on the Multi-Association Group ("MAG") proposal, RICA is simultaneously filing comments on overlapping issues raised in the Further Notice of Proposed Rulemaking in CC Docket No.96-45, FCC 01-8, released January 12, 2001 in regard to the Joint Board recommendation that the Commission adopt the recommendation of the Rural Task Force. RICA's comments are limited to the issues of how the two proposals affect the means by which rural companies can bring improved service to long neglected rural areas. Specifically, RICA will address here the potential impacts on Rural CLECs of the MAG proposal to create a support mechanism for interstate access charges and its proposal for changes to rules regarding mergers and acquisitions.

I CREATION OF A SUPPORT MECHANISM FOR INTERSTATE ACCESS SHOULD NOT ADVERSELY AFFECT THE PROPOSED RURAL CLEC BENCHMARK

A. The Proposed Rural CLEC Benchmark

Pending before the Commission in CC Docket No. 96-262 is a proposal supported by RICA and several other parties to establish a benchmark rate at or below which a CLEC's rates would be presumed reasonable.[1] The proposal is made to resolve controversy created by the refusal of certain interexchange carriers ("IXCs") to pay higher access charges than those of the incumbent with which the CLEC competes. Such rates are inadequate for rural CLECs because their costs to provide service in those locations are substantially higher than the large incumbent Bell Operating Company (BOC). The cost difference is a result of the fact that the BOC's rates are averaged over a large area in which the great majority of the access lines are in lower cost urban areas. Even if the BOC's access charges were substantially deaveraged to reflect actual costs, because the BOCs have long avoided investing in modern facilities in the rural areas, their

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1 Access Charge Reform, *Fifth Report and Order and Further Notice of Proposed Rulemaking,* CC Docket 96-262, 14 FCC Rcd 14221, 14344-49 (1999).

rural plant is both outdated and largely depreciated. The rural CLECs, however, have recently installed state-of-the-art facilities, the major component of which is outside plant. Unlike some electronic based components, the installation cost of outside plant is not declining in cost.

For rural carriers, at least, RICA proposes that the average NECA rate be used as the benchmark.[2] Because RICA member rural CLECs have constructed new plant in areas adjoining their rural ILEC service areas, the costs of providing CLEC service are much closer to the costs of their ILEC operations than the BOC costs, the somewhat higher density being offset by the increased cost of new outside plant construction. The NECA rate is actually a conservative benchmark for most of the RICA members operating in western states because they would recover only the NECA rates, and not their costs which exceed the rates that a NECA member recovers through the pool.

B. If Rate Averaging Support is Adopted, the Rural CLEC benchmark should be set at the NECA Rates plus the RAS

The MAG Plan proposes that Path A carriers would recover existing per-minute switched access rate elements, including carrier common line, local switching, transport and the residual interconnection charges through a Composite Access Rate ("CAR") which would transition to a rate of 1.6 cents per minute by July 1, 2003.[3] The Rate Averaging Support ("RAS") mechanism would be created as an explicit, portable, universal service support mechanism which would be sized to recover the difference between the total Path A pool revenue requirement and the Path A

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[2] RICA Comments, CC Doc. 96-262; Oct. 29, 1999, RICA Reply Comments, Nov. 29, 1999; Additional Comments, Jan. 11, 2001; Additional Reply Comments, Jan. 26, 2001.

[3] NPRM at 4, para. 8.

Revenues derived from the SLC, the switched access elements in the CAR, Long Term Support and Local Switching support.[4]

The effect of the RAS is to allow Path A LECs in the NECA pool to lower their switched access rates to a composite 1.6 cents per minute, while continuing to recover their full interstate revenue requirement from a combination of carrier charges, end user charges and universal service support. RICA recognizes that to the extent NECA rates are reduced by shifting recovery directly to end users, the amount of that reduction should be removed from the benchmark. As to carrier charges, however, the benchmark should include both the CAR and the amounts recovered through the RAS in order to maintain the comparability of the two rates.[5]

II THE "STUDY AREA" RULES SHOULD BE MODIFIED TO ALLOW RURAL LECS TO ADD ACCESS LINES AT THEIR OPTION, WHETHER ACQUIRED BY PURCHASE OR OVERBUILD OF ADJACENT LECS

A. The MAG Plan Proposed Changes to Study Area Rules for Acquired Exchanges

The MAG Plan proposes to modify the existing study area freeze rules and its rules regarding the application of price cap regulation in mergers and acquisitions to simplify the transactions, but continue to provide notice to the Commission.[6] The proposed rule states that Path A and B LECs "may alter study area boundaries when they acquire exchanges or lines from another telephone company, including a company subject to price cap regulation, so long as they

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[4] Id.

[5] To the extent CLECs become ETCs, they may become eligible for any support that is available to the incumbent. In many cases however, this support is inadequate or non existent.

[6] MAG Plan, Exhibit 1, 1-13.

notify the Common Carrier Bureau and the affected state regulatory commission . . . ."[7]

A. Rules Should Be Neutral As to Whether Lines are Acquired by Purchase or Overbuilding

1. Rural Carriers Have, With Difficulty, Significantly Improved Service In Underserved Rural Areas

RICA's Comments in other proceedings have emphasized the differences in the level and quality of telecommunications service in rural areas, depending upon whether the incumbent LEC ("ILEC") is locally owned and operated or is a BOC or other large holding company.[8] Where rural ILEC have been able to purchase these rural exchanges, they have made significant improvements in the quality of service to the benefit of not only the local inhabitants, but also Interexchange Carriers ("IXCs") and their customers because of the improved quality and reliability of access service. These improvements are a result of the small companies being focused entirely on serving the rural areas and with management located in, and responsive to, the local communities.

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7 MAG Plan, Exhibit 3, 3-3. Note that while the current rule and proposed rules are included in "Definitions-Glossary" section of Part 36, the wording does not constitute a definition, but rather a substantive rule. The definition should be returned to a definition such as was contained in the previous Part 67 Rules and any restrictions on changes moved to the substantive sections of the rules. The proposed rule retains the current wording: "Study area boundaries shall be frozen as they are on November 15, 1984," which is no longer correct semantically or factually, because of the passage of time and hundreds of changes to study area boundaries which have been approved since that time. RICA's proposed rule (see Section II. C. *infra*) eliminates these problems, but even if the Commission determines to retain the "freeze" phraseology, it should state that "study area boundaries are frozen as they exist on [date of adoption of rule]."

8 RICA Comments CC Doc. No. 96-262, Oct 29, 1999, 2-3.

Although many exchanges have been transferred over the last ten years, the acquisition of a few neighboring rural exchanges by small ILECs has been always been difficult for a number of reasons. When the large companies do sell exchanges, they naturally want to sell in large blocks, which requires the small companies to form consortia and to bid against large holding companies at prices well above net book value. When sale contracts are obtained, the Commission's regulatory approval process has often been long, costly and apparently designed to discourage such acquisitions. Finally, when approval is obtained, complete rebuild of the exchanges is often required, at further substantial expense.

2. Competitive Entry Is Often More Practical Than Purchase in Rural Areas

For many years rural ILECs were unable to respond to the requests to extend their service to their neighbors in BOC service areas because of regulatory restrictions. The removal of these restrictions by the 1996 Amendments to the Communications Act prompted many rural ILECs to establish CLEC operations where the customer demand for improved service was such that very high penetration rates could be expected. These rural CLECs have provided service to both residential and business customers and so have evolved very differently from CLECs in urban areas which have, of economic necessity, focused their attention on high volume business customers.

C. RICA proposal

1. Support should be equivalent for purchase or overbuild

Whatever means the Commission adopts to support rural telephone company interstate access should not distort the "make or buy" analysis, but should provide essentially the same support whichever path is taken.

2. Modification of the Study Area Freeze to Allow Rural Companies to Include Newly Served Areas Does Not Distort the "Make/Buy" Decision

When the Commission adopted the Universal Service Fund in 1984 it also froze the boundaries or existing study areas in order to prevent carriers from subdividing their study areas into high and low cost areas.[9] Later, when large companies began selling multiple exchanges to small companies, the Commission addressed the resulting study area boundary change waiver requests as if the large companies were selling high cost exchanges for the sole purpose of finding a means to deaverage their study areas to indirectly obtain high cost support for the high cost portions of their areas. At the urging of AT&T and other IXCs, LECs were required to prove that the result of their acquisition would not cause an annual aggregate shift in USF assistance of one percent or more of the total USF.[10] Whatever the economic validity of this theory, the result was to delay for extended periods the benefits of improved service to thousands of rural Americans. Currently carriers are still required to make this showing.

Whatever the validity of the restrictions on subdivision of study areas, the rule, as written, also works to prevent additions to study areas, whether by acquisition or overbuild. Thus not only does a selling company need the Commission's permission to reduce its study area, but the acquiring company needs permission to add the acquired exchanges to its study area. Further,

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[9] MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, *Decision and Order*, 50 Fed.Reg. 939 (1985).

[10] *US West Communications, Inc. and Eagle Telecommunications, Inc., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order,* 10 FCC Rcd 1771, 1774 (1995). Of course no party could ever make this showing until the year was complete because the total transactions for the year would be unknown until then.

because study areas are considered mutually exclusive geographic areas, a LEC which overbuilds a neighboring LEC cannot consider those lines in its cost study, although it could add lines built to previously unserved customers within it boundaries or to previously unserved areas.

The concept of rigid, mutually exclusive study areas is inconsistent with the deregulatory, pro-competitive approach of the 1996 Act and should be abandoned. Alternatively, the rules should at least be modified to permit additions at the option of the LEC, subject only to a requirement that notice be given to regulators and USAC. By freely allowing additions to study areas, the additional lines will receive support based upon the total costs of the entity that is actually serving the subscribers. Such support will necessarily be more specific and sufficient than support based upon the per line support received by the seller or the incumbent.

The Commission, the Joint Board and the RTF have all recognized that the support mechanism adopted for non-rural companies is not appropriate for rural companies.[11] It was for this reason that Commission originally determined to establish rural company support on a different time table and with a potentially different mechanism. The RTF has shown, and the Joint Board agreed, that the Commission's synthesis cost model is not a valid predictor of a rural company's cost.[12]

Even if the model were accurate for rural companies, the use of statewide average methodology may be satisfactory for BOCs which typically serve 90-100% of the subscribers in a

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[11] Federal-State Joint Board on Universal Service, *Report and Order*, CC Doc. No. 96-45, 12 FCC Rcd 8776, 8801-03 (1997).

[12] Federal-State Joint Board on Universal Service, *Recommended Decision,* CC Doc. 96-45, Dec. 22, 2000.

state, but is entirely invalid for rural companies serving a few thousand subscribers, whether in their own study area, in an exchange acquired from a BOC, or in a BOC exchange the rural company has overbuilt in competition with the BOC. The result of this mechanism is that most of the high cost BOC areas adjacent to high cost rural company areas do not get support. [13]

RICA recognizes that this proceeding is not the place to correct these anomalies, but does suggest that they need not be extended into the rural company environment. Instead, the support for all rural company lines should be computed on the same basis, whether they are in the original study area, in exchanges acquired from a non-rural company, or were built into the non-rural company's previously monopoly service area.

If this proposal is adopted, rural carriers will make investment decisions based on their analysis of the intrinsic economic factors in a given area, without being forced to choose a less desirable alternative because of distortions in the support mechanism.

III CONCLUSION

RICA urges adoption of two modifications to the MAG Proposal, which are consistent with the Plan's objective to encourage investment in improvements to telecommunications services in rural America. First, if a rural access support, such as RAS is created, the amounts removed from NECA rates thereby should continue to be included in any rural CLEC benchmark adopted in CC Docket No. 96-262. Second, the study area freeze rules should be modified to

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[13] After hold-harmless support is phased out, high cost support, other than interstate access support, will only be available to non-rural companies in Alabama, Maine, Mississippi, Montana, Vermont, West Virginia and Wyoming. Universal Service Administrative Company, *Federal Universal Service Support Mechanism Fund Size Projections and Contributions Base for the Second Quarter 2001*, February 6, 2001, Apps. HC-11, HC-13.

allow rural carriers to freely add lines or exchanges to existing exchanges. whether the lines are obtained by purchase or overbuild.

Respectfully submitted

Rural Independent Competitive Alliance

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CERTIFICATE OF SERVICE

I, Nancy Wilbourn, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of the Rural Independent Competitive Alliance" was served on this 26th day of February 2001, by first class, U.S. Mail, postage prepaid to the following parties:

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